IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3880 OF 2005

Shri Vinod Natha Bhagat. ... Petitioner
v/s.
Returning Officer, Nimdari & ors. ... Respondents

WITH

WRIT PETITION NO.3881 OF 2005

Shri Sitaram Ghunaji Kewal. ... Petitioner
v/s.
Returning Oficer, Nimdari & ors. ... Respondents

WITH

WRIT PETITION NO.3882 OF 2005

Smt.Mangala Suresh Bhagat. ... Petitioner
v/s.
Returning Officer, Nimdari & ors. .. Respondents

Mr.V.A. Sugdare for petitioners.

Mr.R.V. More for res.No.1.

Mr.P.P.Kakade, AGP for State.

CORAM : H.L. GOKHALE &
S.P. KUKDAY, JJ.

DATE :10th June 2005

ORAL ORDER : (Per H.L.Gokhale, J.)

1. Heard the learned Counsel for the parties in the above three petitions.

2. All these three petitions are concerning the election to Nimdari Grampanchayat situated in Taluka Junar, District Pune. Election is to be held on Sunday, 19th June 2005. These three

petitions are filed yesterday and have been moved today for urgent interim orders.

3. All the three petitioners in these petitions claim to have filed their nomination forms for ward No.3 which consists of villages Nimdari Gavthan, Baghvasti, Sutarmala and Tonachiwadi. The forms filed by these three petitioners came to be rejected on the ground that in the column provided for writing the name of the ward, they have not written the name of the ward. They have, however, mentioned the ward number wherein they are going to vote.

4. Mr.Sugdare, learned Counsel appearing for the petitioners, submits that the name of the ward was not known to the candidates and, therefore, they could not mention it therein. He draws our attention to Rule 11 (2A) of the Bombay Village Panchayats Election Rules (1959), which provides that the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. Apart from making the submission as above, he submits that the Returning Officer has rejected these forms for the benefit of a rival group. Mr.Sugdare drew our attention to judgment of a Division Bench of this

Court in the case of **Anant Janardan Patil vs. State of Maharashtra & ors. reported in 2002 (2) Maharashtra Law Journal page 238**. That was a case where the petitioner claimed to belong to a Scheduled Tribe. He had filled the nomination form to contest the election of a Village Panchayat. His nomination form was accompanied by a certificate issued by the Executive Magistrate stating that he belonged to a particular Scheduled Tribe. His nomination form, however, came to be rejected on the ground that the certificate was not in the format prescribed by the Social Welfare Department of the State Government. The petitioner having moved this Court, it was noted that the petitioner's application was the only application for the particular seat and hence, if his nomination was to be rejected, there would not have been any election to the particular seat and then in the absence of any election, he could not resort to the statutory remedy under Section 15 of the Bombay Village Panchayats Act, 1958. This is recorded in paragraph 4 of that judgment. By way of interim order, the Court directed the Returning Officer to accept his nomination form though the result was to be subject to the decision in the petition. Inasmuch as the petitioner's form was the only form and since it was accepted under the

interim order, he was declared elected un-opposed.

5. As stated above, as far as the objection to maintainability of the petition on the basis of Section 15 of the Bombay Village Panchayats Act, 1958 and on the basis of Article 243-O of the Constitution is concerned, the same was repelled by the Division Bench in paragraph 5 of that judgment by observing that the bar under Article 243-O(4) applies when the election process must culminate in formal declaration of the result and the aggrieved party ought to have adequate and efficient remedy. If the interim order was not to be passed, there would not have been any election and hence, the remedy under Section 15 of the Bombay Village Panchayats Act would not have been available. That is how the objection to the jurisdiction has been answered under that judgment. In paragraph 6 of that judgment, the Division Bench has noted that under Rule 11 (2A) of the Village Panchayats Election Rules, the Returning Officer was not to reject any nomination paper on the ground of any defect which was not of a substantial character. The Court held that the defect in the caste certificate annexed to the petition was not of a substantial character and, therefore, the nomination could not have been

rejected. The interim order had been passed in that matter and subsequently the petition came to be allowed.

6. Mr.Sugdare, learned Counsel appearing for the petitioners, submits that the same course be adopted in the present case. Mr.More, learned Counsel appearing for respondent No.1, on the other hand, points out that if there was any defect in knowing the name of the ward, nobody would have filled the form properly. Three candidates have very much filled their forms for the three seats from this ward. There are number of candidates who have filled their forms for the various seats from the other wards. He, therefore, submits that there is no substance in the grievance that the name of the ward was not known. In his submission not writing the name of the ward would be a substantial defect inasmuch as the Returning Officer would not know as to from which ward the candidate was contesting.

7. Having noted the rival submissions, we cannot ignore that whenever the election process starts unless there is some objection going to the very root of it, the same is not to be halted. That is the mandate of Article 243-O of the

Constitution and which is already enshrined in Section 15 of the Bombay Village Panchayats Act. Mr.Sugdare submitted that although the name of the ward is not mentioned, the number of ward wherefrom the candidate is going to vote in the election has been mentioned. Now, these are two different things. It is quite possible that a candidate may be voting from one ward but may be contesting from another ward. Merely because he has mentioned the number of the ward wherefrom he is going to vote in the election, it cannot be said that he has mentioned the ward wherefrom he is going to contest. Besides, apart from these three candidates i.e. the petitioners herein, the other candidates from that very ward knew what is the name of the ward and they have mentioned it in their forms. If this was the problem for the entire village, there was no reason as to why all other contestants in the two other wards have mentioned the name of their wards wherein the elections are going to be held. We cannot say that the Election Officer has played any role in this on account of this failure on the part of the petitioners or that it is so done for the benefit of the somebody else.

8. As far as the judgment relied upon by

Mr.Sugdare is concerned, it is clearly distinguishable. The candidate concerned had annexed the Scheduled Tribe certificate. The view taken by the Returning Officer was a hyper technical one, namely, that it was not in the format prescribed by the Social Welfare Department of the State Government vide G.R. No.CBC.1680/43669/D-5 dated 29.10.1960. That apart the form of that candidate was the only form and in the event of the form being rejected, there would not have been any election and in which case perhaps the remedy under Section 15 of the Bombay Village Panchayats Act, 1958, would not have been available to the candidate concerned. It is clearly in these circumstances that the High Court had passed the interim order and the petition was allowed. In our view, the facts of that case are clearly distinguishable and the same cannot be compared with the present one.

9. In the circumstances, all the above three petitions are dismissed. We make it clear that it will be open for the three petitioners to file Election Petitions, if they so desire after the results are announced.

(H.L. GOKHALE, J.)

(S.P. KUKDAY, J.)